

[By Paul Heintz](#)

Sen. Patrick Leahy (D-VT) may be third in line for the presidency, but even he can't get his hands on a top-secret legal memo justifying the targeted killing of expatriate American citizens suspected of terrorism.

It ain't for lack of trying.

Shortly after a CIA drone strike killed the American-born cleric Anwar al-Awlaki in September 2011, Leahy called on the Department of Justice to provide him with the memo authorizing such strikes. When none was provided, Leahy pressed Attorney General Eric Holder at a November 2011 hearing of the Senate Judiciary Committee, which Leahy chairs.

"Is there any problem with providing this committee with a copy of that memorandum, even if it is required to be in a classified session?" Leahy asked Holder.

"Well, I first want to indicate that I will not address — cannot address — whether or not there is an opinion in this area," Holder responded. "But I understand, Mr. Chairman, your interest in this subject, and we are committed to working with you to answer your questions in an appropriate setting and to the extent that we can."

Holder's dodge notwithstanding, the memo's existence had been widely reported even back then. But it wasn't until last week that the Obama administration publicly acknowledged its existence.

That came after NBC News' Michael Isikoff obtained a 16-page white paper summarizing the secret memo's legal arguments and published it online last Monday night. The document confirmed that "informed, high-level" U.S. officials could order the killings of American citizens believed to be "senior operational leaders" of al-Qaida or an affiliate — if they posed an imminent threat and capture was unfeasible.

Though Leahy and 10 other senators had written to Obama again earlier that day demanding the memo, it wasn't until Wednesday — the eve of CIA director nominee John Brennan's confirmation hearing — that the administration agreed to hand it over. And even then, they only agreed to give it to members of Congress' two intelligence committees — not to Leahy and his Senate Judiciary Committee.

So the next day Leahy and Sen. Chuck Grassley (R-Iowa), the committee's ranking Republican, pressed Obama again.

"The deliberate killing of a United States citizen pursuant to a targeted operation authorized or aided by our Government raises significant constitutional and legal concerns that fall squarely within the jurisdiction of the Committee," they wrote, noting that their committee oversees the Office of Legal Counsel, which produced the memo.

By the time Seven Days went to press, Leahy spokesman David Carle said the chairman still hadn't received an answer from the White House.

What exactly would Leahy do if he got his hands on the memo?

"Congress is still trying to get the basic facts," Carle said. He added that Leahy plans to hold a Judiciary subcommittee hearing to discuss the matter.

Over the weekend, The Hill reported that Sen. Dianne Feinstein (D-Calif.) said Leahy and Grassley indicated "their concern and interest" in establishing a special federal court charged with overseeing drone strikes. But Carle would not comment on whether Leahy does, in fact, support such a plan.

Leahy's not the only member of Vermont's federal delegation concerned about the administration's unfettered use of drone strikes — and its lack of congressional oversight. Like Leahy, Sen. Bernie Sanders (I-VT) declined to speak with Seven Days, but he said in a written

statement that Congress must "develop in one form or another a process through which decisions are reviewed beyond the White House."

Sanders isn't just concerned about strikes on American citizens.

"In my view, a lot more attention has to be paid to the morality and the damage to our image that the killings of innocent civilians by drones has had," he wrote.

That's an opinion shared by the third member of Vermont's delegation, Congressman Peter Welch (D-VT).

"Will drone strikes become a substitute for the serious, ongoing, necessary work of diplomacy?" Welch said in an interview. "If there's a military option, the tendency is to rely on it often times at the expense of the diplomatic option, and there are legitimate political questions about what's the impact of drone strikes."

Welch and 24 other House members made a similar point in a letter they sent to Obama last June requesting more details about how the administration chooses the targets of its drone strikes — and how it avoids civilian casualties.

"The implications of the use of drones for our national security are profound," Welch and his colleagues wrote. "They are faceless ambassadors that cause civilian deaths, and are frequently the only direct contact with Americans that the targeted communities have. They can generate powerful and enduring anti-American sentiment."

Welch said that in order to "maintain checks and balances," Congress should "actively explore" the notion of establishing some sort of federal court to oversee drone-strike targets, and he believes the program should include "some limited congressional consultation."

"We can't have a system where we make one individual judge, jury and executioner," he said.

Has Congress — and especially congressional Democrats — given Obama more leeway to expand the nation's drone program than it would have given President George w. Bush, as many critics have suggested?

Perhaps a little, Welch said, but for good reason.

"We have a much greater degree of confidence in President Obama — and it's not just because he's a Democrat," Welch said, noting that Obama pulled American troops out of Iraq and is now winding down the nation's role in Afghanistan. "So there's some basis for people like me to have much more confidence in the decisions that President Obama has made in his role as commander in chief than what President Bush made."

But, he added, "I think all of us have to acknowledge that this can't be based on who happens to be in office. It has to be on what's a sensible policy that adheres to the system of checks and balances our country is founded on."